

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

EDWARD FAYE PARKS,

Plaintiff,

vs.

CORNELL CORRECTIONS  
OF OKLAHOMA

Defendant.

NO. CIV-09-0450-HE

**ORDER**

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, filed this action seeking relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2241; 2254.<sup>1</sup> Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell, who recommended that some of the plaintiff's claims be dismissed and one be denied. Specifically, the magistrate judge determined that the plaintiff's claim challenging the execution of his sentence (his transfer from Arizona to an out-of-state prison) should be denied; that his claim seeking a reduction in his sentence should be dismissed for lack of jurisdiction; and that the remainder of his claims, arising under § 1983, should be dismissed for failure to state a claim.

The magistrate judge concluded the plaintiff's § 1983 claims against the private prison were inadequate because he failed to allege that his asserted injuries were caused by an unconstitutional policy or custom. However, because the pleading defect might be cured, Magistrate Judge Purcell recommended that the dismissal be without prejudice and with

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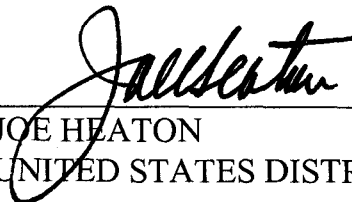
<sup>1</sup>Although the case was filed as a § 1983 action, the magistrate judge construed the complaint to include claims under 28 U.S.C. §§ 2241 and 2254.

leave to amend. The plaintiff has responded to the Report and Recommendation.

Applying de novo review, the court rejects the plaintiff's objections and adopts the Report and Recommendation. The plaintiff's § 2241 claim challenging the execution of his sentence is denied and his § 2254 claim is dismissed without prejudice. The plaintiff's § 1983 claims also are dismissed without prejudice. However, the plaintiff is granted leave to amend those claims to correct the pleading deficiency. If an amended complaint is not filed by Friday, September 25, 2009, the action will be dismissed.

**IT IS SO ORDERED.**

Dated this 20 day of Aug., 2009.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE